

IVIE G. BERRY

IBLA 76-467

Decided June 16, 1976

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's application for land under color or claim of title.

Vacated and remanded.

1. Color or Claim of Title: Generally

A quitclaim deed in which the grantor grants all of his real property which he held of record in the county at the time of the deed constitutes color of title to a tract of federal land in the county which the grantor held of record at the time of the deed, despite the lack of specific description of the land in the deed.

2. Color or Claim of Title: Good Faith

A quiet title decree of a state court does not constitute color of title to a tract of federal land when it was rendered several months after the plaintiff in the quiet title action learned that he did not own the land, although it may serve to demonstrate that the plaintiff is the sole qualified applicant under the other indicia of title upon which the applicant relies.

3. Color or Claim of title: Applications

The failure or refusal of an applicant to submit relevant tax and title data in proper form in support of his application, as required by regulation, is an

adequate basis for rejection of the application. However, where the requested documents are tendered on appeal, the case may be remanded to the Bureau of Land Management for adjudication on its merits.

APPEARANCES: Eldon Douglas, Esq., for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ivie G. Berry filed an application pursuant to the Color of Title Act, 43 U.S.C. §§ 1068, 1068a (1970), to purchase Tracts 96 and 97a in sec. 23, T. 1 S., R. 1 W., N. Mex. Prin. Mer., Socorro County, New Mexico, comprising 4.86 acres of land. The application, dated June 5, 1967, stated that the color or claim of title originated with a deed of conveyance of Tract 96, executed on January 2, 1934, and a deed of conveyance of Tract 97a, executed on June 27, 1942. In addition, the application stated that Berry first learned that he did not have clear title to the two tracts in March 1965.

In a decision dated January 7, 1976, the New Mexico State Office of the Bureau of Land Management (BLM) rejected Berry's application on the grounds that (1) he had failed to furnish sufficient evidence that he was the sole person with color or claim of title to the land, (2) the form listing conveyances affecting the color or claim of title that he submitted to the BLM was undated and did not contain the abstractor's seal, and (3) he had failed to file a report of tax payments and levies made on the land.

On appeal, Berry asserts that the State Office imposed requirements in excess of those necessary for a color of title patent and that these excessive requirements were impossible to comply with. In addition, Berry argues that the material he submitted in support of his claim demonstrates conclusively that he is the only person with color or claim of title to the lands.

[1] One of the two tracts involved in the application, Tract 96, was conveyed in 1947 by warranty deed jointly to Ivie G. Berry and one Paul Rittenhouse. On August 18, 1962, Rittenhouse conveyed to Berry by quitclaim deed "All of my real property in Socorro County, New Mexico, which I now own of record." A copy of the deed was submitted by Berry to the State Office. In its decision, the State Office noted that:

While the deed is very general, and would not be legally adequate for many purposes, it would be, for purposes of the Color-of-Title application, to divest

Rittenhouse of his interest in any lands acquired prior to August 18, 1962.  
[Emphasis supplied.]

Despite this recognition of the adequacy of the quitclaim deed, the State Office held that Mr. Berry "had not furnished evidence that he is the sole owner of the lands applied for \* \* \*."

At the time of the quitclaim deed, Rittenhouse's interests in Socorro County included the interest in Tract 96 that he held jointly with Berry. Upon delivery of the deed, Berry acquired that interest. As a result, he became the only person with color of title to Tract 96. Accordingly, we hold that the quitclaim is sufficient to invest Berry with sufficient color of title to Tract 96, absent any evidence of record to the contrary.

[2] On November 16, 1965, Berry and his wife secured a decree from the District Court of the State of New Mexico for Socorro County quieting title in various parcels of land, including Tracts 96 and 97a. One of the defendants named in the decree was Rittenhouse. The State Office made no mention of this decree in its decision.

The Department has held that the decree of a state court holding that title to specific land is vested in a specific person constitutes color of title under the Color of Title Act. Pearl Christian, 70 I.D. 193, 198 (1963). The decree secured from the New Mexico court by Berry would therefore be sufficient to give him color of title to the specific land named in the decree, except that it was rendered on November 16, 1965, several months after he admittedly discovered that Tracts 96 and 97a were in fact federally owned. The Color of Title Act requires that the applicant claim title to the lands "in good faith." 43 U.S.C. § 1068 (1970). "Good faith" means that the claimant honestly believes that the land was owned by him. A document purporting to recognize a claimant's title to land which issues after he finds out that the title to the land is in the federal government cannot constitute color of title. The state court's quiet title decree was rendered after Berry found out that the land was owned by the federal government, and, therefore, does not constitute color of title. However, it may be considered for the purpose of determining that Berry is the sole claimant who may be qualified under the other indicia of title on which he relies.

No information concerning claim of title to Tract 97a was submitted by Berry to the State Office other than the state court's quiet title decree and the undated list of conveyances. Accordingly, as noted infra, we leave it to the State Office to determine the merits of Berry's claim of title to that tract.

The State Office decision stated that the color-of-title application was not complete in that:

- a. Form 2214-2, Conveyances Affecting Color or Claim of Title is undated and no seal has been affixed thereto by the Abstractor, and is therefor [sic] legally insufficient and not acceptable as a part of the application.
- b. Form 2214-3, Color-of-Title Tax Levy and Payment Form has never been furnished. Payment of State and local taxes indicate proof of good faith and peaceful adverse possession.

[3] A properly dated and certified list of conveyances affecting color of title and a report of taxes paid were properly required by the State Office pursuant to 43 CFR 2541.2(a)(4) 1/ and 2541.2(c)(1). 2/ Failure to provide these materials is ample reason for rejecting the application. 3/ However, with his appeal, Berry has submitted an Abstract of Title dated September 8, 1975, containing the signature and seal of the abstractor, and Form 2540-3 (formerly 2214-3), Color-of-Title Tax Levy and Payment Report, dated August 27, 1975, containing information on taxes paid on Tracts 96 and 97a since 1948. Several tax receipts are attached to the report. Berry gave no reason for his failure to submit these documents to the State Office for its consideration prior to issuance of its decision.

We do not decide whether the curative material submitted on appeal is sufficient to satisfy the requirements of the regulations for a complete color-of-title application. Instead, the case record, as supplemented on appeal, will be remanded for readjudication of Berry's application.

-----  
1/ 43 CFR 2541.2(a)(4) provides:

"(4) Every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters."

2/ 43 CFR 2541.2(c)(1) provides:

"(1) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on a form approved by the Director. The statements of record conveyances must be certified by the proper county official or by an abstractor. The applicant may be called upon to submit documentary or other evidence relating to conveyances or claims. Abstracts of title or other documents which are so requested will be returned to the applicant."

3/ Although neither the statute nor the regulations require that the applicant and/or his predecessors shall have paid State and local taxes on the land in order to qualify a claim of class 1, evidence of such payment (or nonpayment) can serve as an indicium of the applicant's bona fide belief that he owned the land. Accordingly, it is a proper subject of inquiry.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to the New Mexico State Office, Bureau of Land Management for further action consistent with this opinion.

Edward W. Stuebing

---

Administrative Judge

We concur:

---

Frederick Fishman  
Administrative Judge

---

Martin Ritvo  
Administrative Judge

